

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RODD COOLEY,

Plaintiff,

v.

HAROLD CLARKE, *et al.*,

Defendants.

Case No. C05-5560 RBL/KLS

ORDER NOTING NOTICE OF
JOINDER

NOTED FOR:
December 8, 2006

This civil rights action has been referred to United States Magistrate Judge Karen L. Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Before the Court is the notice of joinder of Defendant Warden Smelzer (Dkt. # 42), in which Defendant Smelzer seeks to join in the motions for summary judgment of the remaining defendants (Dkt. # 24, 30). Those motions resulted in a Report and Recommendation (Dkt. # 41), in which this Court recommended that the Plaintiff's claims against Defendants Corrections Corporation of America (CCA) and Harold Clarke be dismissed with prejudice. At the time the Court made its recommendation, Defendant Smelzer had not filed his notice of joinder. The Honorable Ronald B. Leighton adopted the Report and Recommendation by Order dated October 16, 2006 (Dkt. # 47), and Defendants CCA and Clarke have been dismissed from this action.

1 Defendant Smelzer argues that the arguments and authority set forth in Defendant CCA's motion
2 and the conclusions set forth in the Report and Recommendation (Dkt. # 41), based on Plaintiff's failure
3 to demonstrate that the CCCF library was inadequate and Plaintiff's failure to demonstrate any
4 "actual injury," should apply with equal force to him. Before the Court may consider Defendant
5 Smelzer's position, however, the Plaintiff must first be given an opportunity to respond.

6 Accordingly, the Clerk of the Court is directed to **note** Defendant Smelzer's notice of
7 joinder (Dkt. # 42) for consideration on **December 8, 2006**. Plaintiff's briefs and affidavits in
8 opposition to the motion shall be filed and served not later than 4:30 p.m. on the Monday
9 immediately preceding the Friday appointed for consideration of the motion. If Plaintiff fails to file
10 and serve timely opposition to the motion, the Court may deem any opposition to be without merit.
11 Defendant Smelzer may file, not later than 4:30 p.m. on the Thursday immediately preceding the
12 Friday designated for consideration of the motion, a response to the opposing party's briefs and
13 affidavits.

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15 DATED this 9th day of November, 2006.

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19 Karen L. Strombom
20 United States Magistrate Judge